THE COMMISSION: TEN YEARS LATER

INTRODUCTION

This retrospective booklet represents an effort by the Commission on Election Contributions and Expenses to have a look at itself, to consider whether it is fulfilling its purpose, and whether some fundamental changes in its operations are required. It was not intended as an analysis in depth or a commentary from outside.

Upon completion of our study entitled A Comparative Survey of Election Finance Legislation 1983 it became apparent that our Commission is unique in its organization and duties among Canadian jurisdictions, and has but a few counterparts in the United States. This could be good, as having special qualities, or bad, as being an anomaly.

We wanted to think about it and the Tenth Anniversary of the Commission in 1985 seemed a suitable occasion to do so. Our Research Director, Anna Stevenson, gave the task to Joan Barton, who had worked on the Comparative Survey in 1983 and 1984. Joan conducted extensive interviews during the summer of 1984, and compiled them into this survey.

The text was reviewed by the Research Director, and was read by myself and Donald A. Joynt, Executive Director, to ensure that there is no mis-statement of facts or of Commission decisions. Otherwise the text and conclusions are those of the researcher.

As Chairman, I inherited a well established policy of giving assistance to the volunteer party workers and to candidates' supporters, based on trust in their basic honesty. Only where this trust is misplaced, or where callous disregard for the rules is indicated, do we come down heavy on contraventions. This seems to be what the founders intended, and it seems to be working.

Gordon H. Aiken
Chairman.

January 1985.

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PART I

PART I

BACKGROUND

The Ontario Commission on Election Contributions and Expenses was established by the Ontario Legislature under the authority of the Election Finances Reform Act[1] (E.F.R.A.) on May 7, 1975. The E.F.R.A. had been given third reading on May 1, 1975 and received Royal Assent on May 2, 1975. The effective date of the Act was February 13, 1975. This year, the occasion of our tenth anniversary, is therefore a timely point for a self-assessment of our goals and performance in order that our next decade may be as productive and successful as our first.

The Commission is an independent regulatory body which supervises the financing and, to a limited extent, the expenditures of political parties, constituency associations and candidates in the provincial field. The statute which provides the regulatory framework overseen by the Commission is the E.F.R.A. Sections 2 to 9 in E.F.R.A. "create" and define the internal structure of the Commission.

This legislation and our organization were largely the product of the Third Report of the Ontario Commission on the Legislature[2] (i.e. The Camp Commission), which was issued in September of 1974.

The Camp Commission was established by the Legislature on June 9, 1972 with a mandate to:

> "study the function of the Legislative Assembly with a view to making such recommendations as it deems advisable with respect thereto, with particular reference to the role of the Private Members and how their participation in the process of government may be enlarged...."[3]

Subsequently, Premier Davis, with the consent of the party leaders of the House, requested the Camp Commission to report specifically on party and election campaign financing.

The membership of the Camp Commission was tripartite. Dalton Camp was a prominent member of the Conservative party, Douglas Fisher was a former New Democratic Party Member of Parliament, Farquhar Oliver was the former head of the Ontario Liberal Party and a long-time member of the provincial legislature. In their Third Report, the members of the Camp Commission provided a draft for an Election Finances Reform Act which was consistent, clear and well reasoned. Their model Act was designed to achieve a wide-reaching set of goals, which are described at various points in the report:

1) to remove the presence of "big money", derived from large and powerful sources, from the political process[4]

2) to ensure that credible candidates would be able to mount credible campaigns, by relieving the pressing needs of parties and candidates for campaign funds, while providing some deterrent to over-expenditure[5]

3) to increase public knowledge and participation in the political process[6]

4) to create an open system, governed by reasonable rules which are upheld both in the recognized self-interest of parties, and in the interests of the general public[7]

5) to dispel the mystery and secrecy which surrounds traditional fund-raising tactics and gives rise to an atmosphere of public distrust and cynicism regarding political institutions and participants[8]

6) to create a system which is equitable, regularly monitored and vigorously enforced[9]

In its research for the Third Report, the Camp Commission members found that, for the most part, legislation which had been drawn up in various jurisdictions to regulate election practices was treated by the parties involved in a "cavalier fashion", while the public was usually unaware of the existence of the statutes. Efforts to enforce these laws were "negligible" and there seemed to be in fact a general reluctance on the part of the responsible authorities to take action.[10] In particular, the Camp Commission concluded"that the sections of the Dominion Election Act which were then relevant to federal elections, and the provisions of the Ontario Elections Act which applied to the reporting of expenses, were not suitably observed or enforced."

Meanwhile, the Watergate scandal to the South, and some public questioning of relationships between the government and individuals in the private sector in Ontario had led to widespread concern regarding the morality of the political process, and the risk that large corporations which regularly donated major sums to governing parties, could be in a position to unduly influence government. In order to ensure in the ordinary citizen confidence that his participation in the political process was in fact meaningful, it was essential that Ontario election financing legislation be accepted and enforced.

For enforcement and acceptance to occur, a mechanism had to be invented that both parties and candidates would perceive as:

a) committed to making the legislation work, and

b) capable of enforcing it

The Camp Commission considered giving the task of enforcement and administration to the Chief Election Officer of Ontario, (then Mr. Roderick Lewis, Q.C.) but rejected this idea after consultation with Mr. Lewis. In 1975, the Chief Election Officer (C.E.O.) served simultaneously as C.E.O. and as Clerk of the House, appointed to both positions by the Lieutenant Governor in Council. Mr. Lewis did not believe that responsibility for election financing was appropriate for a person in his position. Mr. Lewis explains the situation as follows:

> "The Chief Election Officer has enough to do running the election without having to find out all about the candidates' expenses.... his job is to run the machinery of elections... The only money he's responsible for is the money to pay the election officers, returning officers, poll clerks... Candidates' expenses are quite separate and distinct from the expenses of an election, that is: paying the officials."

It was very important to the members of the Camp Commission that enforcement be seen to be derived from a body independent of the House and of the Government. The legislation proposed broke new ground in an important area of public administration. The work it would entail was too important to be treated as a subsidiary interest of an already established office. The C.E.O.'s position, as a cabinet appointee with responsibilies also as clerk, lacked the necessary aura of independence that was sought. The Camp Commission, therefore, proposed that the

administration and enforcement of the new Act should be given to a new, sole-purpose agency composed of appointees not only of the government but also of the other major political parties in the province and provided, in addition, with the professional assistance of a Bencher of the Law Society of Upper Canada and the C.E.O. of Ontario.

While some changes were made in the draft Act proposed by the Camp Commission before its passage by the House, (notably the deletion of a proposed income tax check-off process for political donations, and the addition of a ceiling on permitted advertising expenditures by parties, riding associations and candidates), the basic thrust of the E.F.R.A. remained true to the proposals and goals of the Camp Commission. Upon passage of the Act, the Commission on Election Contributions and Expenses was authorized, as suggested by the Camp Commission, to administer and enforce the Act.

Since 1975, one other major responsibility has devolved upon the Commission on Election Contributions and Expenses. On December 12, 1978 the Legislature enacted an amendment to Section 11 of the Legislative Assembly Act to provide:

> 70a (1) In this section, "Commission" means the Commission on Election Contributions and Expenses established under The Election Finances Reform Act, 1975.

(2) The Commission each year shall review and make such recommendations as it considers proper in respect of the idemnities and allowances of members of the Assembly under this Act.

(3) The Commission shall report its recommendations to the Speaker and the Speaker shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session.[12]

The amendment took effect on April 1, 1979. On September 4, 1979, Premier Davis asked the Commission to assume the additional responsibility of reviewing the salaries and allowances of Cabinet Ministers, Parliamentary Assistants and Party Leaders.

This amendment is the solution which was found to the problem of providing a means whereby the compensation of our elected representatives can be kept at a reasonable level, with the responsibility for salary increases resting with elected members, while relieving them of the conflicting pressures of the requirement to set their own wages.

Various solutions to this difficulty had been discussed in the First[13] and Fifth Reports of the Camp Commission. The options seriously considered were those of adjusting the members indemnities and expenses by:

1. tying increases to variations in the Consumer Price Index
2. tying increases to those achieved in collective bargaining agreements signed across Ontario
3. tying increases to increases awarded to a selected class of civil servants
4. determining increases on the basis of the regular recommendations of an independent Commission.

Option No. 1 was rejected on the basis that the tying of members' compensation to the Consumer Price Index would effectively isolate them from the effects of inflation, a privilege enjoyed by no other group in Ontario.[15] Options 2 and 3 were disregarded because it was considered inappropriate that elected officials should have a vested interest in the wage/salary negotiations of particular groups.[16]

Reservations were expressed initially regarding the exercise of this authority by an independent commission. The concern was that initiative and decision-making power would be removed from the government in an area in which the government should accept final responsibility.[17] However, it was plain that the prevailing pattern of ad hoc raises, separated by long periods of freeze during which members' salaries declined in 'real' dollar terms, could not be allowed to continue. In the final report of the Camp Commission the writers expressed "sympathy" for the idea of regular independent review.[18] The Morrow Select Committee which reviewed the Fifth Report of the Camp Commission recommended the establishment of a process of annual adjustment of both basic indemnities and other remuneration.[19]

The amendment to the Legislative Assembly Act has provided regular independent review through the Commission on Election Contributions and Expenses, and yet has left final responsibility with the Legislature, where it belongs. The recommendations of the Commission are not binding upon the Legislature.

They are delivered to the Speaker and laid before the House. The Government then decides whether or not a bill reflecting the Commission's proposal should be introduced. The Commission's proposals can, of course, be rejected in whole or in part. Ultimate responsibility for determining pay levels, therefore, remains with the Legislature. The burden of justifying their own salary to the public is, however, removed from the M.P.Ps' shoulders and taken on by an independent all-party Commission charged with the duty of determining what will be fair and appropriate.

Reflecting on this issue in 1983, Mr. Camp, Chairman of the Camp Commission, was pleased that this task had been taken on by the Commission on Election Contributions and Expenses:

> "We were too modest to invite ourselves to assume that role...but it was impossible for the House to do so, both in the interests of the House and the interests of the individual member... I'm satisfied that there's a third party that does this."

THE STRUCTURE OF THE COMMISSION AND THE E.F.R.A.

The Commission on Election Contributions and Expenses (the Commission) consists of nine members: a Chairman, appointed by Order-in-Council for a term of not more than 10 years, two members nominated by the leaders of each political party holding four or more seats in the assembly and fielding candidates in at least 50 per cent of Ontario electoral districts in the last general election and appointed by the Lieutenant Governor in Ontario for a term, not more than five years, a Bencher of the Law Society of Upper Canada and the Chief Election Officer of Ontario. The Act provides that any member of the Commission may be reappointed for one additional term. The full Commission meets an average of nine times per year. There are presently nine full-time staff members employed by the Commission. Although the full staff complement was originally 11, it was found possible, over a period of time, to do without the services of a messenger and a public relations specialist. Present and past Commission members are listed on the following page:

PRESENT MEMBERS AND DATE OF APPOINTMENT

Progressive Conservative Party of Ontario

- H. Donald Guthrie, Q.C. — May 8/80
- Ronald E. Sobier, Q.C. — Feb. 14/79
  (reappointed May 8/80)

Ontario Liberal Party

- Waldemar Zimmerman — May 8/80
- (Mrs.) Barbara Sullivan — Jul. 18/79
  (reappointed May 8/80)

New Democratic Party of Ontario

- William F. Scandlan — Mar. 8/78
  (reappointed May 8/80)
- (Mrs.) Penny Dickens — Feb. 9/84

Bencher of the Law Society of Upper Canada

- (Mrs.) Laura Legge, Q.C. — Nov. 20/80

Chief Election Officer

- Warren R. Bailie — Apr. 2/82

CHAIRMAN - Gordon H. Aiken, Q.C.
Appointed April 5/83

VICE-CHAIRMAN - Ronald E. Sobier, Q.C.
Appointed May/84

PRIOR APPOINTMENTS AND TIME SERVED AS MEMBERS

Edward J. Kowal, Q.C.	May 8/75 - Apr.30/80
(Mrs.) Elizabeth Dreger (deceased)	May 8/75 - Jan.27/79
Harold W. Young	May 8/75 - Apr.30/80
Robert J. Wright, Q.C.	Jan. 14/76 - Jul.18/79
D. Gordon Blair, Q.C.	May 8/75 - Dec.31/75
F. Stewart Cooke	May 8/75 - Feb.15/78
Bernard L. Eastman, Q.C.	Jan. 17/79 - Jul.24/81
Kenneth Bryden	May 8/75 - Nov. 9/78
Martin L. Levinson	Aug. 20/81 - Jan.17/84
J. Roderick Barr, Q.C.	June 20/79 - Nov.20/80
John C. Pallett, Q.C.	May 8/75 - Apr.30/79
Roderick G. Lewis, Q.C.	May 8/75 - Apr. 2/82
James A.C. Auld (deceased)	June 1/82 - June 30/82
Arthur A. Wishart, Q.C.	May 8/75 - May 31/82

The current full-time Commission staff consists of:

Donald A. Joynt, C.A.	Executive Director
Robert B. Dobson	Registrar
Anna B. Stevenson, Q.C.	Director of Research
Edward W. Allen	Assistant Registrar
Daphne Check	Audit Assistant
Margaret L. Moore	Administrative Assistant
Judie Fitzpatrick	Principal Secretary
Millie Petrus	Secretary
Maria Kovacs	Receptionist Secretary

The purpose of the Commission is largely defined by the legislation it administers. While the E.F.R.A. does not contain a statement of purpose or preamble, the goals expressed by the Camp Commission clearly underlie the key provisions of the Act. The Act contains, in particular, evidence of a desire to open up the political process, to establish public accountability in political financing, and a drive toward the expansion of opportunities for significant political activity on the part of the individual.

Sections 10, 11 and 15 of the E.F.R.A. are clearly directed toward the enhancement of openness and accountability in Ontario political life. These sections require that all political parties, constituency associations and candidates register with the Commission before they may legally accept contributions for any election campaign, or for any other purpose of a party or association. Every political party, constituency association and candidate is required to appoint a chief financial officer (C.F.O.) under Section 34. The C.F.O. must ensure that records are kept, deposits are made, receipts are issued and that audited financial statements are filed with the Commission as required by Sections

42 and 43 of the E.F.R.A. All documents filed with the Commission are public records open to inspection by any person upon request, by virtue of section 16 of the Act. Section 4 of the Act requires that the Commission publish a summary of each candidate's election receipts, expenditures and subsidy in a local riding newspaper subsequent to an election.

Broadening the basis of political activity in the province is clearly the motivation behind sections 17 and 19 of the Act. These provisions impose limitations on the amounts an individual, trade union or corporation may contribute during any year or during any campaign period, to parties, constituency associations and to candidates. Donations from any other sources are forbidden.

Public participation has also been encouraged by an amendment to the Income Tax Act (Ontario)[20] which has introduced an income tax credit for political contributions at the provincial level. Receipts issued in accordance with the provisions of the E.F.R.A. enable an individual to claim a tax credit from the individual's total provincial tax payable in the year in which the contribution was made, which is equal to a set proportion of his contribution, up to a maximum of $500. Under the Corporations' Tax Act of Ontario,[21] Section 28, a corporation is permitted to claim up to a maximum contribution of $4,000. per year as a deduction from its taxable income. Unused (in the sense that contributions were made in one year over $4,000., or that there was insufficient taxable income to deduct the contribution made) political contributions can be carried forward indefinitely by a corporation.

The Act provides, in Section 45, limited public funding provisions for candidates' election expenses:

> 45.(1) Every registered candidate in an electoral district who receives at least 15 per cent of the popular vote in such electoral district is entitled to be reimbursed by the Commission for the lesser of his campaign expenses for the campaign period as shown on his final statement of receipts and expenses filed with the Commission in accordance with section 43, together with the auditor's report in accordance with subsection 4 of section 41, or the amount that is the aggregate of 16 cents for each of the first 25,000 voters in his electoral district and 14 cents for each voter in excess of 25,000 in his electoral district.
>
> (2) In relation to candidates in the electoral districts of Cochrane North, Rainy River, Kenora, Lake Nipigon, Algoma and Nickel Belt, as set out in the Schedule to The Representation Act, 1975, the amount determined under subsection 1 shall be increased by $2,500.
>
> (3) A candidate is not entitled to be reimbursed for expenses under subsection 1 unless he or his chief financial officer has filed a financial statement of receipts and expenses as required by section 43, together with the auditor's report theron as required by subsection 4 of section 41 and the Commission is satisfied that such statement meets the requirements of this Act.

This section ensures that credible candidates may mount credible campaigns. It was particularly important to the success and acceptance of the Act during the period in which major parties were forced to change their traditional fund-raising tactics in order to comply with the limitations placed on contributions from any one source.

Limitations on expenditures by parties, riding associations and candidates on campaign advertising are set by sections 38 and 39 of the E.F.R.A.

> 38. (1) No political party, constituency association or candidate registered under this Act and no person acting with its or his knowledge or consent, shall after the issue of a writ for an election and before the day immediately following polling day, except during the period of twenty-one days immediately preceding the day before polling day,
>
> (a) advertise on the facilities of any broadcasting undertaking; or
>
> (b) procure for publication, cause to be published or consent to the publication of, except during such period, an advertisement in a newspaper, magazine or other periodical publication or through the use of outdoor advertising facilities,
>
> for the purpose of promoting or opposing any registered party or the election of a registered candidate.

> 39. The total expenses incurred for advertising by a political party, constituency association or candidate registered under this Act, including advertising done by any person, corporation or trade union with the knowledge and consent of the political party, constituency association or candidate, by the use of time on the facilities of any broadcasting undertaking or by publishing in any newspaper, magazine or other periodical publication or by display through the use of outdoor advertising facility shall not, during the period referred to in subsection 2 of section 38 exceed,

(a) in the case of a registered party in relation to a general election, the aggregate amount determined by multiplying 25 cents by the number of names appearing on all of the revised lists of voters at the election for the electoral districts in which there is an official candidate of the party;

(b) in the case of a registered party in relation to a by-election in an electoral district, the amount determined by multiplying 50 cents by the number of names appearing on the revised list of voters for the electoral district; and

(c) in the case of,

(i) a registered constituency association of a registered party and the official candidate of such party in an electoral district, or

(ii) an independent candidate in an electoral district,

the amount determined by multiplying 25 cents by the number of names appearing on the revised list of voters for the electoral district. 1975, c.12,s.39.

This provision is a departure from the recommendations of the majority of the Camp Commission. (Note: One member of the Camp Commission, Farquhar Oliver, did favour ceilings on party and constituency association expenditures, believing that limitations on spending would increase the effectiveness of the rest of the proposed provisions.) The majority of the Camp Commission rejected expenditure ceilings in relation to advertising as an infringement of free speech, and as hopelessly difficult to enforce.[22] Nevertheless, these sections were inserted into the Act before it was passed in the House. This was a response by the members of the House to the serious problem of soaring campaign

costs, which was linked to the increasing costs of television time. In 1982, Conservative strategist Norman Atkins commented on the perception of the media at the time:

> "Television changed the system. It's the single most important factor...because of the demands for more money to operate modern campaigns. The corporate base could no longer handle it. Parties were moving into deficit positions."[23]

The legislative intent of sections 38 and 39 was to institute spending limits on electronic media, because modern advertising was perceived due to the increasing importance of media advertising and its potential to be infinitely expensive.

Although no specific purpose for the Commission is set out in the E.F.R.A., certainly its first goals must be to implement the legislation it administers so that the underlying purposes of the legislation are achieved. The Commission receives some guidance in how to go about this task in section 4 of the Act, which sets out the major duties of the Commission:

> 4. (1) The Commission, in addition to its other powers and duties under this Act, shall,
>
> (a) assist political parties, constituency associations and candidates registered under this Act in the preparation of returns required under this Act;
>
> (b) ensure that every registered constituency association and registered candidate has appropriate auditing services in order to properly comply with this Act;
>
> (c) examine all financial returns filed with the Commission;
>
> (d) conduct periodic investigations and examinations of the financial affairs and records of registered political parties and constituency associations and of registered candidates in relation to election campaigns;

(e) reimburse candidates for election expenses in accordance with section 45;

(f) recommend any amendments to this Act that the Commission considers advisable;

(g) report to the Attorney General any apparent contravention of this Act;

(h) prescribe forms and the contents thereof for use under this Act and provide for their use;

(i) prepare, print and distribute forms for use under this Act;

(j) provide such guidelines as it considers necessary for the guidance of auditors and political parties, constituency associations and candidates and any of the officers thereof; and

(k) publish a summary of each candidate's election receipts, expenses and subsidy in a newspaper having a general circulation in the electoral district in which he was a candidate.

(2) The Commission shall report annually upon the affairs of the Commission to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session.

In order to facilitate an investigation under Section 4(1)(d), the Commission has been given authority to conduct inquiries under the Public Inquiries Act (Section 5), and to inspect the books and records of a political party, constituency association or candidate at any reasonable time (Section 6).

The Act also provides stringent enforcement provisions for the use of the Commission. Under the provisions of section 47, the C.F.O. of a political party, constituency association or candidate is liable to a fine of up to $1,000. if he is found

guilty of violating sections 42 or 43 of the Act -- i.e. the requirements to file financial statements with the Commission. If the C.F.O. is found guilty under section 47, his or her party association or candidate is also deemed guilty of an offence and subject to a fine (maximum fine for a party: $2,000., for a constituency association or candidate, $1,000.) Section 48 provides that any corporation or trade union that contravenes the Act is guilty of an offence and liable upon conviction to a maximum fine of $10,000. It is an offence to obstruct a person who is making an investigation under the authority of the Act, or to withhold or destroy any document or "thing" relevant to the investigation (section 50). Even if no penalty is particularly spelled out in the Act, section 49 provides that every person, political party or constituency association that contravenes any provision in the E.F.R.A. is guilty of an offence and on conviction liable to a fine of up to $1,000. A political party, constituency association or trade union is deemed to be a person for the purposes of prosecution under the Act (section 53).

The enforcement provisions are set in motion by the report by the Commission to the Attorney General of apparent contraventions of the Act required by section 4(1)(g). The Attorney General may then initiate proceedings against the offender if he obtains the consent of the Commission to the prosecution as required by section 54.

The first duty given to the Commission was that of assisting parties, associations and candidates in preparation of returns (section 4(1)(a)). The Commission has taken that duty seriously, and goes to great lengths to see that the returns filed with it are clear, accurate and properly audited.

The Commission was also given a set of teeth. This is because the Commission has a dual responsibility to fulfil in order to achieve the goals of its legislation. In the debate in the House of April 8, 1975, the topic of the role of the Commission in reference to the new legislation, the E.F.R.A.,arose. On that occasion Mr. Donald C. Macdonald, N.D.P. member for York South, clearly stated the task of the Commission when he said, "The function of this Commission will be to be both a watchdog and a counsellor to all those who are involved."

DAY-TO-DAY

The first meeting of the Commission took place on May 15, 1975. Members were aware that: 1) they were expected to be 'counsellors and watchdogs'; 2) a general provincial election was imminent. (The writ was issued on August 11, 1975).

Office space was found at 151 Bloor Street West in Toronto and consultative services were arranged with the law firm of Tory, Tory, Deslauriers & Binnington and with Clarkson Gordon & Co., regarding legal and accounting matters. All political parties holding more than four seats in the House and their constituency associations were deemed to be registered under the Act as of February 13, 1975 by virtue of section 13. The Communist Party of Canada (Ontario) registered in time for the election by submitting a petition bearing over 10,000 signatures of eligible Ontario voters which was found to satisfy the registration requirements of the Act by the Commission (section 10). The Chairman of the Commission consulted with Mr. Jean Marc Hamel, the federal Chief Electoral Officer, and received valuable advice and assistance. Mr. Donald A. Joynt, C.A., was engaged as Executive Director.

Thirteen Commission meetings were held before polling day and, after conferences with the members of the Camp Commission, three amendments were recommended to sections 10, 11 and 15 of the Act. The recommendations had the effect of ensuring that no contributions could be accepted by a candidate, or on his behalf prior to his becoming registered as a candidate, which could not

happen until the writ was issued. The amendments were designed to prevent the possibility of an unfair advantage falling to incumbent candidates who might otherwise easily solicit funds in advance of an election period. The amendments were passed without opposition in the legislature.

By polling day, September 18, 1975, 408 constituency associations, 456 candidates and four provincial parties (the Progressive Conservative Party of Ontario, Ontario Liberal Party, New Democratic Party of Ontario and Communist Party of Canada (Ontario)) were registered. The members of the Commission had established a skeletal administrative form and had made some basic decisions regarding the role of their organization in the Ontario political forum and the right approach to be taken in the administration of the E.F.R.A. Mr. Edward J. Kowal, Q.C., an original member of the Commission, described the problems that were faced and the decisions that were made:

> "We had to establish a set of machinery, set of regulations, set of guidelines, policies... [that] really didn't exist in the country at that time, so we were basically looking at the intent and spirit of the legislation. Our task by and large was to make their [volunteers] task fairly straightforward...to provide them with a method not necessarily requiring special qualifications.
>
> Secondly, [our task]...was to make the legislation as comprehensive as possible... We started with a premise...that we were not going to be a prosecutorial agency. We weren't going to lie in wait in the bushes to ambush somebody who, probably mostly through inexperience or lack of knowledge, may have stepped over the line.

> We were going to be a helpful agency in the sense that we were going to work as a partnership to make the thing work...
>
> Our first presumption...[was]that people are basically honest, and we weren't wrong in that assumption and we established a relationship which, I think, is quite unique amongst enforcers and enforced. That was, I think, terribly important in the early stages".

When the election took place on September 18, 1975, the essential forms and guidelines had been prepared and delivered to those in need of them. The Commission staff then provided advice and assistance for hundreds of political workers who called or wrote to the new office. No deliberate contraventions of the Act were observed during the 1975 campaign. All contraventions were reported by the Commission to the Attorney General's office, as required by section 4(1)(g) of the Act but, the Commission decided that the philosophy of the E.F.R.A. was in keeping with a policy of assistance to the mistaken and prosecution of the intentional wrongdoer only. Therefore no recommendations for prosecution were made to the Attorney General. Generally, it was found that all those subject to the Act made a conscientious effort to meet its requirements.

Following the election, the Commission members and staff met with volunteer political workers to discuss questions and difficulties which had come to light in the practical application of the statute to an election. The First Report of the Commission was also prepared and submitted to the Speaker in February of 1976. The First Report established the style which would be followed in future years. Accounts of the activities and the

yearly expenditures of the organization are provided, as are statistical breakdowns of the public information gathered by the Commission in the course of its duties. Proposed amendments to the Act are also included.

The first full year of operation for the Commission was 1976. At this time the review of financial reports regarding the campaign period from all registered parties, constituency associations and candidates was completed. As qualified candidates' reports were approved, their election expense subsidy provided by section 45 was paid by the Commission, as were the subsidies for auditors of constituency associations and candidates, as provided by section 41(7) of the Act. Annual reports were then received from riding associations and parties, and also from the administrators of party foundations and constituency association trusts (sections 40(1) and 1(4)). The analysis and approval of annual statements and the registration and deregistration of parties and constituency associations forms the backbone of regular Commission activity in non-election years. By-elections give rise to election period reports from those involved and general election periods give rise to waves of campaign period reports for which part-time staff must usually be hired.

Election activity has been regular in Ontario since the formation of the Commission, as the following chart indicates:

HISTORICAL REVIEW OF PROVINCIAL ELECTION ACTIVITY SINCE THE ELECTION FINANCES REFORM ACT CAME INTO EFFECT FOR PROVINCIAL GENERAL AND BY-ELECTIONS IN THE PERIOD FEBRUARY 13th, 1975 TO SEPTEMBER 1st, 1984

Year	Date Writ For Election Issued	Polling Day	Campaign Period Section 1(1)(c) From	To	Commercial Advertising Activity Period Section 38(1) From	To(see note)	Filing Due Date For Financial Statement Section 43(1)
1975 General Provincial Election	Aug. 11/75	Sept.18/75	Aug. 11/75	Jan.18/76	Aug. 27/75	Sept. 16/75	Mar. 18/76
1977 General Provincial Election	Apr. 29/77	June 9/77	Apr. 29/77	Oct. 9/77	May 18/77	June 7/77	Dec. 9/77
1978 By-elections: -							
Chatham-Kent	Sept.11/78	Oct. 19/78	Sept.11/78	Feb.19/79	Sept.27/78	Oct. 17/78	Apr. 19/79
Sault Ste. Marie	Oct. 30/78	Dec. 14/78	Oct. 30/78	Apr.14/79	Nov. 22/78	Dec. 12/78	June 14/79
1979 By-elections: -							
Scarborough West	Feb. 19/79	Apr. 5/79	Feb. 19/79	Aug. 5/79	Mar. 14/79	Apr. 3/79	Oct. 5/79
Wentworth	Feb. 19/79	Apr. 5/79	Feb. 19/79	Aug. 5/79	Mar. 14/79	Apr. 3/79	Oct. 5/79
1980 By-election: -							
Carleton	Oct. 6/80	Nov. 20/80	Oct. 6/80	Mar.20/81	Oct. 29/80	Nov. 18/80	May 20/81
1981 General Provincial Election	Feb. 2/81	Mar. 19/81	Feb. 2/81	July 19/81	Feb. 25/81	Mar. 17/81	Sept.19/81
1982 By-elections: -							
Hamilton West	May 10/82	June 17/82	May 10/82	Oct.17/82	May 26/82	June 15/82	Dec. 17/82
York South	Sept.27/82	Nov. 4/82	Sept.27/82	Mar. 4/83	Oct. 13/82	Nov. 2/82	May 4/83
1983 By-election:							
Stormont, Dundas & Glengarry	Oct. 31/83	Dec. 15/83	Oct. 31/83	Apr.15/84	Nov. 23/83	Dec. 13/83	June 15/84

Note: Pursuant to Section 38(3) the expiry date for cessation of commercial [illegible] further day for newspaper [illegible]

The administration of the Act throughout the past 10 years has given rise to a significant store of election expertise and sensitivity on the part of Commission members and staff regarding the inherent difficulties encountered in applying this kind of legislation. As a result, the advice of the Commission has been sought by many jurisdictions regarding the institution or operation of election finance legislation. Consultations took place with officials from the provinces of Quebec, Alberta, Saskatchewan and Newfoundland in 1977 and with representatives of Alberta, British Columbia, New Brunswick, the State of California and Trinidad and Tobago in 1978. Since its formation the Commission has maintained a library and employed summer research staff in order to extend its awareness of the development of election financing in other jurisdictions. Results of this research is published regularly and made available to universities, members of the legislature and the interested public, free of charge.

The budget of the Commission is prepared by the staff under the supervision of the Chairman, then submitted to the members for scrutiny and approval. It is then taken before the Board of Internal Economy and subsequently the Estimates Committee of the Legislature. The Chairman, the Executive Director and the Registrar are in attendance to answer questions and provide any explanations necessary. After this, the budget is passed by the Legislature. The Commission is audited annually by the provincial auditor. If a surprise election is called, supplementary budget estimates are sent to the Board of Internal Economy, since the monies which are paid out as statutory subsidies to candidates

and auditors following an election are included in the Commission's budget.

Prior to 1975, the Camp Commission recommended that the Commission which enforced election financing legislation should operate for less than $500,000. per year. Operating expenses for the Commission have been:

1976	-	$470,800	
1977	-	387,100	- general election June 9/77
1978	-	427,100	
1979	-	427,300	
1980	-	431,800	
1981	-	552,700	- general election March 19/81
1982	-	571,200	
1983	-	532,800	

As can be seen from the above figures, despite constant inflation the Commission did not exceed the $500,000. figure until 1981.

The Commission considers its duty to assist political parties, constituency associations and candidates to be an active duty. As a result of this, many volunteers in the field who are subject to the provisions of the Act rely upon the expertise and good humour of Commission staff to deal with practical problems. Badly organized financial reports are periodically received. They are "reconstructed" as far as possible by Commission staff and then returned to the C.F.O. or auditor involved for resubmission. In unusual circumstances of serious difficulty, Commission staff have worked with a volunteer directly from original bank statements to aid that individual in his or her effort to meet the filing requirements of the Act.

Extensive guidelines have been prepared by Commission staff for the C.F.O.s of candidates, parties and constituency associations. The guidelines are available free of charge. A pocket guide to key points in the legislation is now also available, providing quick reference in clear terms for fund-raisers in the field.

In 1984, two further steps were taken to ensure that the members of the provincial political network were kept informed as to the procedures they could use to make their work as simple as possible.

First, the Commission introduced the "Election Finance Reporter", a quarterly newsletter distributed to all those currently involved in the provincial field. The newsletter provides a forum for exchange of information between the Commission and its constituents. It is also a means to make known interpretations of statutory provisions as they are developed by the Commission, recent research publications, suggested solutions for common problems and the existence of new services such as the Commission's seminar program. Staff profiles are included as well in the hope of rendering the voice on the other end of the telephone (so often the first sign of a problem), a bit more warm and human.

Second, the seminar program, also new in 1984 is extensive. Commission staff organized 20 seminars, held on week-ends, in February, March and April in various locations throughout Ontario. Three hundred and ninety C.F.O.s, association executive members, auditors and M.P.P.s registered for the sessions which covered a

review of the responsibilities of C.F.O.s and association executive under the Act. Staff members also appeared upon request at provincial party meetings to provide advice on issues related to the E.F.R.A.

A special effort has also been made to increase corporate awareness of the terms of the Act. Corporate donors have a tendency to violate the limitations upon their contributions under the E.F.R.A. unwittingly due to the failure of various branches of a corporation to coordinate their donations. In 1977 the Commission arranged with the Ministry of Revenue to include in a Ministry of Revenue bulletin information regarding the maximum allowable corporate contribution levels in Ontario. This bulletin was distributed to all corporations in the province.

Because the late filing of a financial return is an apparent contravention of the Act which must be reported to the Attorney General, (sections 42, 43 and 4(1)(g) the Commission conducts a full campaign each year to urge C.F.O.s and auditors to meet the statutory deadline for their party or constituency association. The deadline for annual reports is May 31. The necessary forms are mailed in the second week of January with a covering letter to all those required to file. Follow-up letters are sent during the next three months. In May, C.F.O.s and auditors who have not yet been heard from are called by Commission staff and reminded of the approaching time limit. If reports are delayed for legitimate reasons -- e.g. the sudden changeover of C.F.O.s -- the late filing is reported to the Attorney General by the Commission, but

the Commission does not recommend prosecution. The Commission also has the power to deregister a party or constituency association which fails to satisfy the requirements of section 14(2) of the Act. This has been done with respect to a constituency association which provided no valid reason for a delay in filing its 1983 annual return. Upon receipt of the completed return and compliance with other conditions laid down, the Commission permitted the association to reregister.

Commission members and staff do not view themselves as policemen, nor do they view the role of the Commission as primarily prosecutorial. Their task is the helpful administration of the Act, and the thorough investigation of any complaints which are brought to their attention. In actual fact, at any one time the competing parties are found to police themselves very efficiently, reporting any irregularities in the behaviour of their opponents promptly. This involves the Commission in potential trouble situations at an early stage, while negating any need to maintain a large "election police" staff.

In the event that it is necessary to initiate a prosecution under the Act, the Commission follows the procedure outlined below, which was worked out in consultation with the Attorney General's office in 1979:-

1. The Executive Director and his staff investigate and prepare all the background material relating to the offence.

2. In accordance with section 4(1)(g) the apparent contravention is reported to the Attorney General and the Commission expresses its opinion as to whether or not the offence should be prosecuted.

3. Counsel from the Ministry of the Attorney General review the apparent contravention and background material. Counsel advises whether or not, in his view, the material shows in law, reasonable and probable grounds for a belief that an offence has been committed. The Attorney General reserves the right to stay or withdraw the prosecution if it later should appear to be in the public interest to do so.

4. If counsel for the Attorney General believes that there are reasonable and probable grounds for the belief that an offence was committed, the Executive Director of the Commission prepares a draft information to be laid.

5. The Executive Director then attends a meeting of the Commission and places before it the draft information and all relevant information, which the Commission considers while determining whether or not to give its consent to the prosecution, as required by section 54, E.F.R.A.

6. The Commission having consented, the Executive Director then consults with the Crown Attorney in the judicial district in which the offence was committed, to ensure the adequacy of evidence to support prosecution of the charge. If everything is in order, the Executive Director then swears the information before a Justice of the Peace in that district.

7. The local crown attorney then conducts the prosecution of the case in court.

One candidate in the 1981 general election was prosecuted for contraventions of the Act. He was found guilty on three counts and fined $175.

There is no specific limitation period in the E.F.R.A., thus section 721 of the federal Criminal Code is applicable.[24] This means that proceedings must be instituted not later than six months after the subject matter of the proceedings occurred. As reports are filed only once a year in non-election years, this presents a potential problem in that the Commission could well be unaware of a contravention of the Act for some six months after it has occurred. This is one of the many issues dealt with in the

amendments to the E.F.R.A. which have been drafted and proposed by the Commission.

Ten years of operation have brought to light uncertain terms and practical problems which are inherent in the statute as drafted. It is the Commission's responsibility under section 4(1)(f) to recommend any amendments to the Act that it considers advisable. Since 1975, twenty-three amendments have been proposed, written up in the form of draft legislation with commentary and presented to the House in the Commission's annual report to the Speaker. In 1982, the Standing Committee on Procedural Affairs reviewed all of the Commission's recommended amendments up to that date and supported all of them, except for two minor details, i.e. -- increasing a proposed dollar limit on cash contributions from $25. to $50.[25] Other amendments proposed for the E.F.R.A. generally cover such matters as adjustments to limitations on campaign expenditures and on the campaign period, clarification of key statutory terms such as "contribution", institution of a limitation period; controls on government advertising and adjustments to filing requirements. A more basic revision of the Act is now being considered by the Commission to cover areas of the Act which have gradually developed into problems.

In April of 1979, the Commission acquired the responsibility of advising the House regarding members' allowances and indemnities. A committee of the Commission was formed to take on this responsibility. Harold W. Young (Chairman), Roderick Lewis, Q.C. and William F. Scanlan were the original members of the sub-committee.

This committee examined the remuneration which was provided at the time for federal M.P.s and for provincial representatives across Canada. In Ontario, members of the government, of each party caucus and the three house leaders were interviewed. It was then decided that the recommendations of the committee would be based upon the following premises:

1. Allowances and indemnities should not be tied to civil service salaries. (In this, the Committee agreed with the Camp Commission.)

2. Non-taxable allowances should be subject to close scrutiny while the thrust of any increment should be reflected in the taxable indemnity.

3. Allowances and indemnities for members of the Ontario Legislature should be comparable to those in other jurisdictions across Canada.

4. Reasonable additional compensation should be allowed for additional responsibility.

5. If possible, some incentive should be built into the overall system of compensation.

The Commission has submitted six reports based on this foundation to the Legislature. In the Fourth Report of the Commission in Respect to Indemnities and Allowances, submitted in February 1981, four further factors were pointed out as fundamentally important to th the consideration of appropriate remuneration of elected members:

1. The occupation of a Member of the Legislature should be regarded as virtually full-time and professional.

2. It should be assumed that a Member of the Legislature has no other income.

3. It should be accepted that members are married with family responsibilities.

4. Regard should be given to the sacrifices both a member and his or her spouse must make in regard to their enjoyment of leisure and family life.

The recommendations of the Commission regarding this issue have met with a good degree of success. The initial report was submitted on June 14, 1979. It dealt with changes in the basic indemnity and expense accounts payable to members and also with changes in the basic indemnity payable to:

- the Speaker, and the Deputy Speaker
- the Chairman of Committees of the Whole House
- the Chairman of Committees of the Assembly
- the Chief Whip, Deputy Whip and Assistant Government Whip
- the Chief Opposition Whip and Opposition Whip
- the Chief Whip and Whip of a recognized party
- the House Leader of the official opposition
- the House Leader of a recognized party

An increase of slightly more than five per cent was proposed for the ordinary members. All of the recommendations contained in the first report were passed in their entirety on June 21, 1979.

In the Third Report of the Commission in Respect to Indemnities and Allowances, an effort was made to relate the additional indemnities which were payable to various offices to the duties and responsibilities required by the office. The recommendations of the Third Report were enacted in their entirety by the Legislature on June 17, 1980.

When the Fourth Report on this issue was submitted by the Commission on February 3, 1981, three recommendations were made:

1. A proposed increase of members' basic indemnity from $24,500 to $30,000 per year.
2. A proposed increase in the additional indemnity of the Leaders of the Opposition and recognized parties.
3. A proposed increase in per diem allowance for attendance at Commission meetings.

The Legislature enacted the first recommendation as it had been proposed and increased the additional indemnity payable to the Leaders of the Opposition and recognized parties to a slightly higher amount than that recommended by the Commission. The third recommendation was not adopted by the Legislature, which chose to decrease the taxable per diem allowance and to retain the non-taxable status of other benefits. The Legislature also passed a measure on its own initiative increasing non-taxable allowances to members.

The Fifth Report on Indemnities and Allowances of March 5, 1982 recommended an increase of 9 per cent to the basic members' indemnity. The House, however, passed an increase of only 6 per cent, in consideration of the government's policy of fiscal restraint. Since 1982, the Commission has committed itself to follow government restraint guidelines. Thus, the Sixth Report, submitted on February 23, 1983 recommended that all indemnities and allowances be increased by not more than 5 per cent. The Legislature subsequently passed a measure increasing members' annual indemnity and expense allowances by 4.86 per cent.

In January, 1982 the Commission published a detailed study of the problems inherent in establishing appropriate compensation for elected members. Parliamentary Pay Issues: A Framework For Discussion was the product of an extensive review of the remuneration and benefits provided for elected representatives in Canada, England and the United States of America. As this was a thorough investigation of a relatively unexplored field, a second printing of 300 copies was needed to meet the demand for the publication.

PART II

EVALUATION

Delegation of authority to an independent administrative agency is not always the natural or most successful means of giving effect to a piece of legislation. Our political system is based on the premise that power and responsibility should generally be exercised by elected officials, or by those directly responsible to elected officials. There is also a valid concern that the creation of strings of administrative agencies can be one way to mask an overall growth of government intervention in the private lives of citizens which suffocates normal and healthy activity through over-regulation.[26]

Let us consider, first of all, what it is that the Commission is doing and secondly, whether or not this task could be performed by any other appropriate body. The task of the Commission is threefold in that it must:

1. apply the law
2. elaborate the law
3. legitimize the law

Application of the law can be a fairly straightforward matter: auditing financial returns for completeness, counting the number of signatures on a petition for registration of a party, and so forth. But the application of the statute readily slides into problems of elaboration of the law. This situation occurs as soon as a question of interpretation of vague wording in the statute arises, or circumstances develop in which a decision must be made concerning issues which were unforseen when the authorizing legislation was drafted.

For example, the frequent practice of the collection of contributions by registered provincial parties and associations, which are intended for use in the municipal as opposed to the provincial political forum, has been raised before the Commission. As this issue is not specifically addressed in E.F.R.A., the Commission has had to rely on its awareness of the spirit and purpose of the Act, as a result the following Guideline for Chief Financial Officers on Activities Outside the Purposes of the Act (guideline G-23) was drafted:

> "Contributions to a registered political party, constituency association or candidate which are expressly solicited for purposes other than the purposes of the Act, while not prohibited under the Act, do not quality for the tax credit under the Income Tax Act (Ontario) or the deduction under the Corporations Tax Act (Ontario). Examples of contributions which do not qualify for a tax credit or deduction include moneys solicited for the purpose of supporting a charitable cause or supporting the candidacy of a person at a municipal election.
>
> However, all such contributions must be recorded in the financial records of the political party, constituency association or candidate and reported to the Commission pursuant to Section 41 of the Act."

Commission staff also must inevitably 'elaborate' the law daily when providing informal advice and explanations of the statute and guidelines to those who request immediate oral advice. On the basis of this kind of advice, people who consult the Commission make their initial decisions as to their own position in relation to the legal status and privileges available under the Act. Registration under the Act is a valuable political tool in Ontario. It is essential for a viable political presence,

because registration is required in order to legally collect money and issue income tax receipts on behalf of a candidate or organization. This is one example of the areas of political activity regulated under the Act in which important vested interests are at stake for the parties involved, and an element of discretion in the administration of the Act is unavoidable. In this situation, the body which administers the law must be seen to be even-handed and unbiased both for those subject to their decisions and by the public at large.

The Commission's legitimizing function is, therefore, very important. The inclusion in its membership of representatives of each of the parties seated in the Legislature has provided an opportunity for the various interests involved to participate in the administration and development of the statute. By including such groups in the process of decision making, the Commission satisfies the natural desire of constituent interests to participate in the resolution of issues that concern them. Party support for the success of a general scheme of administration of which they form an important part, and for particular decisions regarding approach or interpretation to which they have contributed, is encouraged. One of the original party representatives on the Commission, Mr. Stewart F. Cooke, explained the relationship of the parties and the Commission, as follows:

> "I don't think if you had set up the Commission any other way, you would have had that kind of cooperation, - it would have been... looked at as a policeman only and not as a place where assistance can be obtained.... You have to have the support of the parties in anything like that to make it work properly, otherwise you have a kind of 'catch me if you can' society ...and they'd have no commitment to making it work at all."

The Commission structure also legitimizes the administration of the Act in the eyes of the public. Financial records of constituency associations, parties and candidates are now open and accessible, staff is readily available to assist with photocopies and answer questions. The competing political interests seated on the Commission itself can reasonably be expected to keep watch on their opponents, and to speak out if any abuse of political authority takes place. The general openness of the organization combined with the balancing of party representatives has enhanced public acceptance of the legislative scheme, and this,in turn, has enhanced the health of the body politic as a whole. Mr. Robert J. Fleming, Executive Secretary of the Camp Commission and presently Director of Administration of the Legislative Assembly, put it this way:

> "We're dead in Canada if we can't preserve the integrity of the political system...it's essential that the Legislature and its members somehow have rectitude and integrity... [The Commission] has that job of somehow making the people feel that the political ball game is their game, that it's an honest game, that it's a fair game that they can all contribute to..."

Whether or not the Commission can create this perception in the public mind will depend greatly upon the skills and commitment of those entrusted with the job, i.e. the Commission members and staff. There must be a general belief that those to whom the responsibility has been given are competent to hold it. To return public confidence the Commission must arrive at what are perceived to be the "right" solutions for problems arising in complex political milieus, in which the different interest groups concerned may well hold differing views even as to what constitutes the relevant facts and values to be taken into account when making a decision. Success in this situation requires both a measure of political sensitivity and an impeccable reputation for high professional standards.

Three seats on the Commission are filled, at the requirement of the statute, by individuals with the capacity to make uniquely useful contributions to the tasks at hand, while bolstering general public confidence in the administrators of the Act. The Bencher, the Chief Election Officer of Ontario and the Chairman each perform very individual roles.

It is worth remembering that although the political parties have tended to appoint representatives to the Commission with legal experience, there is no legal requirement to do so. There is also no requirement that the Chairman of the Commission be a lawyer. When the Camp Commission suggested that a Bencher should sit on the Commission which administered E.F.R.A., it was thought that this would ensure that representatives of all parties had access to legal commentary on any issue arising during a meeting

which they could be sure was unbiased and impartial. When sitting on the Commission the Bencher is to embody the disinterested public good. The current Bencher, Mrs. Laura Legge explains:

> "I'm sure they chose a Bencher of the Law Society because that is a person who is... completely independent of all of the political parties. I'm there as a neutral person, as is the Chief Election Officer...two people who don't represent anybody except the public generally... [I] make certain that I always vote in my view to see that the spirit of the Act is carried out and the best interests of the public are served."

The Chief Election Officer brings both his strong public reputation for complete impartiality and his unique practical expertise in election management to the Commission. Long-standing Commission member, Mr. William F. Scandlan describes the Chief Election Officer's position:

> "From the Chief Election Officer's point of view, he has a very difficult role. He is to be neutral, not to play a partisan role in the election process. Certainly his presence on the Commission is worthwhile, because then there's a lot of knowledge and information available."

The role of the Chairman of the Commission is different again from that of the Bencher or the Chief Election Officer. Traditionally the Chairmen of the Commission have been distinguished individuals with long records of public service and a degree of active political experience.

The first Chairman, Arthur A. Wishart, Q.C., came to the Commission from a distinguished career as a long time M.P.P., as the Attorney General of Ontario from 1964 to 1971, and as the former Chairman of the Criminal Injuries Compensation Board of Ontario. Upon Mr. Wishart's retirement, Mr. James A.C. Auld,

a businessman, with extensive experience in House and in Cabinet was appointed to the Commission. The Commission suffered the untimely loss of Mr. Auld, after only a brief period. The present Chairman, Gordon H. Aiken, Q.C., is a lawyer and author with fifteen years of experience as a federal Member of Parliament.

The Chairman's first responsibility is to be the representative of the appointed Commission in the staff office on a day-to-day basis. He is the liaison between the Commission and the staff, there to deal immediately with any questions that arise containing an element of interpretation or policy. The Chairman must decide whether the problem can be dealt with immediately with reference to his instructions from the Commission, or whether the point must be brought before the full Commission at a meeting.

The Chairman also performs an important public relations function for the agency, representing the Commission to the public, the press, in other jurisdictions and to the members of the Legislature. The political experience possessed by all the Chairmen of the Commission has enabled them to deal as peers with the elected members of the House. This gives the Chairman's advice and criticism a legitimacy in the view of candidates running for public office that is accorded only to the words of someone who has actually 'been there' himself.

The combination of electoral experience, distinguished qualifications and representation of diverse political interests within the organization has been necessary to produce the following positive characteristics of the Commission:

1. High quality of decision-making due to the wide information base provided by various Commission members.
2. Openness of Commission activity.
3. Low likelihood of any tendency to unthinking administrative conservatism, due to constant reasoned debate from different points of view.
4. Low likelihood of capture of the administration of the Act by any particular group of regulatees.

Given that a delicate balance of compelling interests and particular qualities have produced an accessible and responsive administration, could the same or better result have been obtained another way?

Prior to the passage of the E.F.R.A. the task of administering the election practices legislation was left to the Attorney General and the courts. Instances of actual enforcement were virtually non-existent. It would solve few problems now to burden our expensive and overcrowded legal system with the sole responsibility for highly specialized cases laden with thorny questions of politically acceptable behaviour. It would also be inappropriate to create a situation in which court actions would be instituted against citizens in contravention of the statute, deserving only to participate in the political process, but lacking in good bookkeeping skills.

Neither the Cabinet nor the Legislature are suitable for involvement in or responsibility for regular decision-making under the Act. These bodies do not have the time or the detailed background knowledge to deal with repeating problems of a technical nature. Cabinet and the Legislature can use a proportion of their scant available time to examine issues which arise under the Act from a broad perspective, and to set new policy directions. Specialized problems of audit requirements or application of financial restrictions should be handled by specialists.

Experts are often found in the employ of government departments. It is questionable, however, whether or not this legislation could be suitably administered by a civil servant in a government department. The need for openness and the appearance of impartiality in the application of this Act has already been discussed. For a public servant, the ability to identify politically relevant aspects of a problem and then to use this knowledge for the effective advancement of his Minister's program is central to his work. The public expects no more or less from him. To ask a public servant to administer legislation regarding political finances in an entirely different (i.e. dispassionate) manner may be unrealistic. People who are long associated with a particular hierarchy tend to adopt the values and perspectives of that system. If the person identifies with the goals and values of the structure to which he belongs, he will acquire a vested interest in justifying the validity of the assumptions and actions which flow from these values. His administrative policy may, therefore, be less likely

in fact to be open to debate or responsive to varying points of view. His policies will certainly be perceived as obscure and unresponsive unless some way is provided for the views of the governing party to compete in a forum containing alternative views.[27]

The Chief Election Officer is one person whose position of impartiality is generally accepted. There is reason to doubt, though, that the combination of the Commission's responsibilities with the very different enterprise of ensuring the procedural success of elections would prove successful. Mr. Warren Bailie, present Chief Election Officer of Ontario, voiced misgivings.

> "I think it's [election financing] an important enough matter that it needs to be an all-party committee, and I don't agree that you can have an all-party committee advising the Chief Election Officer. I think that the statutory requirements of my office are such that I have to, it just has to be more of an autocracy, really. I have to be able to make decisions."

Essentially, during an election, deadlines under The Election Act,[28] which is administered by the Chief Election Officer, are immediate and inflexible. There is no time to obtain group responses or engage in debate. The Chief Election Officer presently operates with a permanent staff of 10, taking on temporary help to deal with the rush during election periods. If a problem arises during an election period regarding a question of election financing, should the Chief Election Officer be required to divert his full attention from the problem of ensuring that the overall operation is a success to the particular case? It is interesting that many Canadian jurisdictions

do expect this response from their Chief Electoral Officers, or from an appointee in an equivalent position.

In Ontario, this is not the case, however. The Legislature has entrusted the task of administering election finance legislation to the members of the Commission and, on a daily basis, to the staff of the Commission. The activity generated during a general election has, in Commission experience, been intense. Party officials and workers 'phone constantly with problems which seem to arise on a daily basis. The Commission staff, who are known to and trusted by these people, are generally able to resolve problems without undue delay. Our experience would appear to indicate that the job of the Commission is vital to the efficient running of election campaigns and that neither the Chief Electoral Officer, nor an advisory committee reporting to the Chief Electoral Officer could carry out this role in quite the same way. In the words of Commissioner Barbara Sullivan:

> "The participation of the members of the Commission in an active, rather than passive way, is, I believe, one of the major strengths of the Ontario Act. Advisory committees are never as satisfactory because they don't carry the responsibility for their decision-making; additionally, advisory committees are frequently ignored by management -- in the Chief Electoral Officer's instance, the bureaucracy.

THE CANADIAN EXPERIENCE

Readers interested in an extensive breakdown of election finance legislation and administration across Canada are referred to A Comparative Survey of Election Finance Legislation 1983, which was published by the Commission early in 1984.

The following tables indicate the jurisdictions in Canada which have legislation regulating election financing, and the form of their administering/enforcing agencies.

Election Finance Legislation

Canada	Canada Elections Act, R.S.C. 1970 C.14 (1st Supp.) as amended to 1982.
Alberta	Election Finances and Contributions Disclosure Act, R.S.A. 1980, C.E-3 as amended to June 1, 1982.
British Columbia	No act deals specifically with election financing. Some reporting requirements under The Election Act, R.S.B.C., 1979 C.103, S.172-178 (consolidated September 1982).
Manitoba	The Election Finances Act, S.M. 1980 C.E.-32. Note: Bill 48, as passed in August 1983 by the Legislature,will effect substantial changes in Manitoba election finance law when proclaimed.
New Brunswick	Political Process Financing Act 1978 as amended by: 1978 C.82 1979 C.41 1980 C.40
Newfoundland	No act deals specifically with election financing. Some reporting requirements under The Election Act, R.S., Nfld., 1970, C.106, s. 112-121.
Nova Scotia	Elections Act R.S.N.S. 1967, C.83 as amended: 1969 C.40 1970 C.41 1973 C.29 1977 C.28 1981 C.21

Ontario	The Election Finances Reform Act, R.S.O. 1980, C.134.
Prince Edward Island	Election Expenses Act, Bill No. 53 32 Elizabeth II, 1983. Assent June 23, 1983. Not yet proclaimed.
Quebec	The Act to Govern the Financing of Political Parties, L.R.Q., 1977, CF-2, as amended: 1977 C.12 1978 C.6, C.13 and C.15 1979 C.37, C.56 1982 C.17, C.21, C.31, C.54 and C.62
Saskatchewan	The Election Act, 1971, R.S.S. 1978, CE-6, s. 203-232, as amended to 1981.
Northwest Territories	No act deals specifically with election financing. Very limited reporting requirements under The Elections Ordinance 1978, C.3.
Yukon	No act deals specifically with election financing. No reporting requirements.

Administering and Enforcing Agencies

Canada	Chief Electoral Officer appoints a Commissioner of Canada Elections whose duty is to ensure compliance with and enforcement of the Act. Commissioner meets regularly with a three-party ad hoc advisory committee. Advice of the committee is not binding upon the Commissioner.
Alberta	Administration and enforcement are responsibilities of the Chief Electoral Officer.
British Columbia	Reporting requirements are the responsibility of the Chief Electoral Officer.
Manitoba	Administration and enforcement are the responsibility, at present, of the Elections Commission. The Elections Commission is composed of: - the Chief Electoral Officer - a Chairman, appointed by the Lieutenant Governor in Council - two representatives of each registered party. Legislation abolishing the Commission was passed in 1983, but not proclaimed.

New Brunswick	Administration and enforcement are the responsibility of the Supervisor of Political Financing, who is appointed by the Lieutenant Governor with the approval of the Legislative Assembly. The statute provides for an advisory committee consisting of two representatives of each party seated in the Legislature, and the Chief Electoral Officer. The duties of the advisory committee are described in the Supervisor's annual report as the duty to "bring the problems and concerns of the people involved in the political process to the attention of the Supervisor, and to give the Supervisor the benefit of their experience and counsel."[30]
Newfoundland	Reports required by statute are submitted to the Minister of Justice.
Nova Scotia	Administration is the responsibility of the Chief Electoral Officer. Enforcement responsibility is split between an Election Commission established by statute and the Chief Electoral Officer. The Election Commission is composed of: - a Chairman appointed by the Lieutenant Governor in Council - two persons appointed by each of the leaders of the recognized parties - the Chief Electoral Officer The duties of the Election Commission are to: 1) consider reports of investigations carried out by the Chief Electoral Officer and determine whether prosecution is warranted. 2) advise the Chief Electoral Officer regarding the administrative conduct of elections.
Ontario	Administration and enforcement are the responsibility of the Commission on Election Contributions and Expenses, with the co-operation of the Attorney General's office.

Prince Edward Island	Administration and enforcement are the responsibility of the Chief Electoral Officer.
Quebec	The Director General of Elections, persona designata of the National Assembly, is responsible for administration and enforcement. He is assisted by an advisory committee established by statute which is composed of: - the Director General of Elections - three representatives of each organized party represented in the National Assembly. The representatives are designated by party leaders, and at least one of each group of three appointed representatives must be a member of the National Assembly. The duty of the advisory committee is simply to give its opinion on any question relating to the Act.
Saskatchewan	Responsibility for enforcement and administration lies with the Chief Electoral Officer, who may appoint a Commissioner of Election Expenses.
North West Territories	Responsibility for enforcement and administration lies with the Chief Electoral Officer.

As can be seen, the usual approach in Canada at the present time is to provide that the administration and enforcement of election finance legislation be carried out either by a Chief Electoral Officer alone, or by a Chief Electoral Officer with the assistance of an advisory committee. Two recent events underline this tendancy in election administration:

1. In August 1983, the Manitoba Legislature passed Bill 48, an amendment to their election finance legislation. When proclaimed Bill 48 will introduce an important system of public subsidy for

candidates' expenses in Manitoba. The Bill will also dissolve the Manitoba Elections Commission and substitute in its stead an arrangement whereby their legislation will be administered by the Chief Electoral Officer with the assistance of an advisory committee made up of representatives of all registered political parties in Manitoba (i.e. there will be no requirement that a party be seated in the House before it is entitled to representation on the committee). The advice of the committee will not bind the Chief Electoral Officer.

2. In Quebec, the Act to Govern the Financing of Political Parties originally provided for a separate organization to be responsible for the administration and enforcement of the statute. The Director General of Financing of Political Parties (D.G.F.P.P.) carried out this task with the assistance of an Advisory Committee on Election Finances. The duty of the Advisory Committee was to assist in interpreting the Act and in formulating guidelines. Effective January 1, 1983, the Quebec legislation was amended by the Act respecting the Integration of the Administration of the Electoral System (1982, C.54). As a result, Sections III and IV of the old legislation were deleted, and the D.G.F.P.P. and his advisory committee were abolished. The administration and enforcement of the Act is now the responsibility of Mr. Pierre F.Cote, the Director General of Elections. In Quebec, the Director General of Elections has wide responsibilities in all areas of election law, therefore, what has in fact occurred is the rejection of the

concept of independent administration of election finance legislation, and the return of the responsibility for such matters to the equivalent of a Chief Electoral Officer. While the Director General is still under an obligation to consult with an advisory committee, he is under no compulsion to accept their advice. (The Election Act, L.R.Q. C-3 S.215.1).

Why have the governments of both Manitoba and Quebec recently shied away from independent administration of their election finance legislation?

Two issues which were raised in the Manitoba Legislature during the debate of Bill 48 were the costs of maintaining a separate facilility for the administration of the statute, and the possibility of delays in the resolution of disputes which occur during an election campaign (i.e. such decisions would require immediate resolution from a group of individuals who must first coordinate a meeting and arrive at a consensus). The belief was also expressed that a risk of 'trade-offs' existed within a Commission in that infractions of the statute would not be dealt with under the appropriate legislation but be settled by compromise between the opposing parties represented at the meeting.[31]

Concern for the costs of administration arose in Quebec also, when the integration of the administration of the electoral system was debated. The Director General of Elections (Quebec) believes that there were two principal reasons that the integration took place:

> "[There were] two purposes. First, one was to have a...coordination of the administration and the way of thinking and of applying the Act. Concern for one way of thinking, not three.
>
> The other...was to economize because instead of getting three public relations services [we could] get one...
>
> It's not easy for three, six or nine people to agree upon the same way of thinking or the same way of applying an Act, because human nature is... to prefer one's own point of view. It is quite natural, but it is inefficient."

Prior to the integration, there were three separate organizations in Quebec which operated in the electoral areas, namely, the areas of financing of political parties, of establishing of electoral divisions and of administering the rules of an election. A need was felt to combine the administration of these areas in order to prevent a situation in which each could "go off in different directions" while applying its piece of Quebec election law.

The specific problems encountered in Quebec and Manitoba are not evident in Ontario, due to a combination of factors, notably the composition of the Ontario Commission, the relationship which exists between the Commission and the Chief Election Officer's office, and the Commission's history of restraint in terms of expenditure and expansion.

The concern regarding "horsetrading" and political compromises that could potentially undercut the Act may simply not be a difficulty that arises in practice. The individuals interviewed for this report were unanimously surprised at the suggestion and all repeated variations of the response 'it has never come up'.

Whether the presence of the Bencher on the Commission, or the stature of the Chairman and Chief Election Officer enforces a level of professional conduct upon all members of the Commission, or whether the fact that there is three-party representation on the Commission prevents the striking of deals between any two opposing parties is not, therefore, something that can be determined.

By the same token, the Commission has never received any complaints regarding the speed of its decision-making. It may be that in Ontario there is a perception that, to make a decision that someone's election is void, or that his seat should be declared vacant should not be done speedily. Anyone placed in that position in the heat of an election campaign is unlikely to complain that a meeting is held and the complaint is heard before action is taken precipitously.

It is true that there was some reduction in costs achieved in Quebec when the office of the D.G.P.P.F. was united with the office of the Director General of Elections. Two offices in Montreal were closed down, and of the 26 individuals who were employed there, only four or five moved to Quebec City to continue their work there. It must be borne in mind that the Director General has very wide responsibilities regarding the area of electoral representation, administration of general elections and the supervision of the authorization of political parties and election financing, both at the provincial level, and in many larger municipalities. Nevertheless, the permanent staff of the

Director General's office is well over 150 people. The combined permanent staff of both the Ontario Commission and the Ontario Chief Election Officer is 19 people.

Friction between those who administer election legislation in Ontario has never been a problem. The parties involved seem to view the functions of the two offices involved, (the Commission and the Chief Election Officer's office) as completely separate and apart. Information flows easily between the two organizations, and the Chief Election Officer sits on the Commission. Consultation does occur when areas of overlapping interests appear. Such issues arise infrequently and are viewed as opportunities for cooperative efforts, rather than obstacles.

Mr. Stewart F. Cooke explained the attitudes of the parties involved:

> "We never had any problems with that... it may be that in some places where they didn't develop the relationship that we have....you fight over the peripheral areas of both jurisdictions... you create the overlap. We didn't have that problem...We had nothing but cooperation."

It is impossible to deny that costs and delays are inherent in any system which widens the degree of participation available in any decision-making process. The balance which must be struck in this case involves a choice between values; the values of efficiency and of accessibility. Both of these elements are essential to good government, and sometimes one must suffer at the expense of the other. What is important is that the choice between the two be made openly, so that the public is aware of what has been lost and gained in the transaction. The essential

characteristic of an advisory committee system is that it is advisory. Mr. Coté stated the reality clearly:

> "The main difficulty with such a committee is that the members must remember that they are just advisory.... I think there must be just one person in charge. Right now, I am that person."

Parties in such a system have no hand in the actual making of decisions, and no responsiblity for the development or the application of the legislation. What their degree of commitment is to the success of the legislation to which they are subject, is unknown. These are very different circumstances from those which exist in Ontario. The Commission here is decision-making. Fortunately, the costs of wide participation in the Ontario system have remained low and the need to weigh one value against the other is not at issue.

PART III

RECENT PROPOSALS

A number of suggestions have been made regarding possible adjustments to the administration and composition of the Commission, which could be effected through minor amendments to the E.F.R.A. Various ideas are listed below, to be discussed in the pages that follow.

1. Commission members could be permitted to hold party office.
2. Elected members of the Legislature could be permitted to sit on the Commission.
3. Commission membership could be expanded to include representatives of all registered parties.
4. Parties which fail and continue to exist in name only could be reviewed and deregistered by the Commission.
5. The Commission could take over the auditing of financial reports currently performed by independent auditors.
6. The Commission could oversee the provision of a statutory remuneration to party, constituency associations and candidate Chief Financial Officers (C.F.O.s).

1. Party Office

It seems at first glance illogical that partisan party representatives are required by statute to sit on the Commission, yet simultaneously forbidden to maintain party office while a Commission member. If party input is important to the Commission, it would seem reasonable to make attendance at the Commission one of the duties of the party executive. An executive member could then report Commission decisions to the party, and advise the Commission regarding the viewpoint of the party, without involving a middleman as messenger between the two organizations. Nevertheless, the majority of Commissioners interviewed preferred to abstain from direct involvement in any provincial party during their period of service. Two reasons were usually given.

First of all, should a Commission member simultaneously hold a party office, that individual would be subject to party discipline during his term. Several Commission members suggested that this could bring about situations in which members were pressed to push "the party line" on particular issues, regardless of what the reasonable interpretation of the Act might be. The members would easily be placed in the positions of having a formal conflict of interest.

Secondly, a party official seated on the Commission could also be placed in the uncomfortable situation of having to publicly chastize his or her own constituency association. This could then be used against the member, both by the media and by members of his own party.

2. Elected Members.

If some or all of the members of the Commission were elected members of the Legislature, the administration and regulation of political financing would be carried out by a group with direct ties of responsibility to the electorate. One of the tasks of the Commission is to convince the people that the political process belongs to them, and this would be one way to increase the public perception of the administration of the Act as responsive and open.

This approach is used in the Quebec Advisory Committee, with mixed results. (One or more of the representatives appointed to the Committee by each party must have a seat in the National Assembly). It is useful to have members of the Legislature

immediately available when working out all-party agreements, particularly regarding issues such as proposed amendments. However, it is the duty of a parliamentarian to be partisan and adversarial, while it is the duty of those who administer the Act to be impartial. The Director General of Elections of Quebec has, therefore, found that his consultations with elected members are most productive when in camera, in order that the member need not feel the need to 'play to his public'.

Even if meetings are closed to the public, a member is still subject to House and party discipline, both of which impose claims on loyalty and conscience which are not necessarily compatible with the non-partisan goals of an agency like the Commission. M.P.Ps seated on the Commission would find themselves in a position of conflict of interest to the extent that they received, as candidates, benefits in the form of subsidies under an Act which they themselves administered. All the problems associated with requiring elected members to set their own salaries and indemnities would also resurface.

Democracy does not require and is not necessarily furthered by the giving of exclusive say in the political process to elected members. Past Commission member, Mr. Stewart Cooke, had this comment:

> "It wouldn't guarantee either that there weren't qualified people or that there were qualified people, or that there would be cooperation between the parties or wouldn't be. The House is a body where the political party elected representatives...are pretty

> adversarial. When the representatives of the political parties meet at the Commission they are examining how the decisions they make affect their political party as well as other political parties...it's not an adversarial situation...
>
> Being a member of caucus...I don't think they have a monopoly on all of the knowledge about the political process. A person in Canada can become nominated in a riding and elected to the House, particularly in ridings that are pretty steady in terms of the political party they support, who have had very little participation in the actual political process beyond their riding. That kind of person wouldn't contribute very much...
>
> The political process is wider than the elected members of the House".

3. Expansion of Representation

Should we then widen the political process to include representatives of all parties registered with the Commission? Currently, to be entitled to representation a party must: a) nominate candidates in at least 50 per cent of the electoral districts in the most recent general provincial election, and b) be represented in the Assembly by at least four members (Section 2(a) E.F.R.A.). In the past, registered parties in Ontario have acquired their status either by virtue of the fact that they held a minimum number of four seats in the Assembly at the time the E.F.R.A. was passed, or through the submission of a petition bearing 10,000 names and addresses of Ontario electors who attest to the registration of the party concerned (sections 13 and 2(d) E.F.R.A.). Those signing the petition are not required to join the party or state support for its platform, but only to declare that they support the group's effort to

attain the status of a registered political party. It is also possible for a party to apply for registration upon nominating candidates in at least 50 per cent of the provincial electoral districts in a general provincial election, but this route has never been used. In the experience of the Registrar, it will take a sizeable group of people who are apparently industrious in their efforts approximately one year to obtain a petition upon which an application to register can be based.

Some objective standard is needed to assess a political entity and determine whether or not the group has enough widespread support to warrant representation. It may be that the ability to satisfy the registration requirements is enough. When Bill 48 is proclaimed in Manitoba, membership in the new advisory committee of the Chief Electoral Officer will be open to representatives of all registered parties. However, the recommendations of the committee will not be binding upon the Chief Electoral Officer.

The requirement that represented parties must actually hold legislative seats does perform several functions. Parties which win seats are parties which are able to appeal to a broad enough spectrum in the community to win an election. This reduces the chance that the party in question is the exclusive tool of a particular single interest group. The chances are increased that the party will have a commitment to the well-being of the community as a whole and to the well-being of the parliamentary system of which it forms a part. If every party which is registered is permitted represention on the Commission, it is possible that

eventually a majority of the Commission members would have no link to the effective political process, and very limited political experience. In this situation both the credibility and the competence of the Commission would be in jeopardy.

4. Deregistration of Failed Parties

This proposal would entail an amendment to the Act which would authorize the Commission to deregister parties which are consistently unable to maintain a viable political presence in the province for a reasonable period of time.

Minority parties sometimes appear on the basis of single issues. If the emotional point that unites the first enthusiasts is then resolved or weakens over time, these organizations become essentially a spent force. Their public privilege, -- to collect money, to issue tax receipts run on, -- usually unexercised but intact, while no benefit is derived in turn by the public. The ongoing existence of these political shells also raises a possibility of abuse by interlopers using the party structure to raise money for purposes other than those professed by the party's original organizers.

It would seem sensible that the Commission should be entitled to begin the deregistration of such a party if, for example, the party fails to field candidates in at least 10 per cent of provincial ridings in the most recent general election. (As the self-evident purpose of a political party is to win elections, failure to field candidates suggests itself as a clear indication of the absence of a real political entity).

Notice and hearing would, of course, be provided by the Commission for the party involved, as it is now provided to those subject to deregistration proceedings under Section 14 E.F.R.A. (failure to file a return).

5. Auditing

Each year, the Commission pays a statutory subsidy to the auditor of each constituency association's annual return which is equal to the lesser of $250. or the amount of the auditor's account to the association (section 41(7)(a) E.F.R.A.). If an election is called the subsidy is again paid to auditors of constituency association campaign period returns, and a subsidy equal to the lesser of $500., or the amount of the auditor's account is also paid to the auditor of a candidate's campaign period return (section 41(7)(b) E.F.R.A.). Commission staff spend the majority of their time reviewing and querying incomplete audited reports.

Would it save money, time and trouble to abolish the subsidies and have all returns audited by the Commission?

Frustration with time delays encountered while working out auditing problems through the mail, and a desire to save the taxpayers money are at the root of this suggestion. Unfortunately, practical and political factors weigh against it.

On the practical side, it must be remembered that for an audit to take place, a skilled accountant must have access to the original financial documents of an organization for an indefinite period of time. Constituency associations and candidates, by definition, have their headquarters throughout the province, and

C.F.O.s of associations and candidates are sometimes amateurs who cannot be presumed to know what will be needed by their auditor.

In these circumstances, for the Commission to ask that original documents or certified true copies be shipped en masse to Toronto, and then to attempt a long-distance audit would be a large-scale invitation to problems in long-distance communications, lost documents and mail delays.

The alternative would be a travelling staff of auditors, visiting each constituency. The Commission would have to train a large number of accountants with regard to the application of the Act and then send them out each spring to prepare the annual flood of returns. The staff would no longer be required once the returns were processed. Travel and man-hours would be expensive during the rush period, and trained personnel would be lost during slack periods. Staff would generally be hard to come by during the spring rush, as the accounting industry is always under strain at that time. General elections would also create unpredictable demands for personnel.

Meanwhile, although cases of unusual billings for the audit of a passive association's return do occur, they are rare. In most cases the complexity of an active association's return makes it evident that most auditors perform highly professional work for their political clients, which is by no means fully compensated by the statutory subsidy.

Even if the auditing function could practically be centralized, it is probably not politically wise to do so. Mrs. Penny Dickens, present Commission member and past C.F.O. of the New Democratic Party of Ontario explained:

> "You've got your little person out there and you have this gray eminence in Toronto sending information back saying, well, this is out, that is out.... I think it would be more difficult. In most of the ridings it's either an active member who fills out the audit form or it's somebody they know, so that they can go across town...and say 'What did you do with that?"

Political activity in Ontario should never be intimidating or frightening. Certainly in order for the Commission to further its aim of encouraging wide participation in the process, it desires to make campaigning as attractive to the individual as possible. For this reason the development of a staff of "avenging auditors" who would inevitably descend upon local volunteers in ignorance of local practices and tradition should be avoided. The Commission has built up a relationship of respect and affection with those presently in the field which it would be a pity to lose for what would be, at best, a doubtful increase in efficiency.

6. Remuneration of C.F.O.s

If the auditors are entitled to financial compensation via the statute, what of the Chief Financial Officers? Many C.F.O.s put in untold hours of work to ensure that they will satisfy the requirements of the Act. Certainly these people perform a public service. Certainly others who perform a public service under the Act receive forms of remuneration, in terms of subsidies, per

diems, or simple compensation. Why is this the one responsibility for compensation which has been left completely to those involved?

The difficulty is based in the fact that, were a C.F.O. of a candidate association or candidate to receive a statutory remuneration as part of his job under the E.F.R.A., he would be the only executive member of the association or campaign committee to do so. The position of the C.F.O. is that of financial manager. Other members of the group, the president of the association for example, may have equally onerous or heavier responsibilities. There is, therefore, little guarantee that the C.F.O.s contribution to the health of the campaign is or is not equal to or overshadowed by the efforts of other key members of the group. The situation, therefore, in which one member of a party association or campaign team is singled out by statute for special merit while others are not, is one which the Commission has concluded is better avoided.

AREAS OF INTEREST

When considering new proposals it is always necessary to remember that the primary responsibilities of the Commission are those of administering and enforcing the E.F.R.A. Nevertheless, proposals for change have been invited by the Legislature, both in the yearly salary and benefit reviews conducted by the Commission for the House, and in Section 4(l)(f) of the E.F.R.A. which states:

> 4(l) The Commission, in addition to its other powers and duties under this Act shall...
>
> (f) recommend any amendments to this Act that the Commission considers advisable.

The Commission has a duty to fulfill this responsibility. The members of the Camp Commission expected that the Commission which administered the E.F.R.A. would take an active role in the development of the Act. Mr. Camp comments:

> "A commission is the best instrument. It has to be something that has enough of an understanding of what's going on, and has enough real contact and involvement with the political process...so that you can constantly be aware of the needs, if any, of reforming and improving and changing the Act.
>
> ...one thing about this Act, in order that it be respected, it has to be realistic. The minute it gets out of whack, people have some kind of contempt for it, then I think there's sort of this massive rebellion against it, passive resistance, then the Commission could not endure, and the Act could not endure".

Indeed, Mr. Camp feels strongly that "any Commission worth its salt" would make recommendations on any area of the Act which in its opinion was becoming obsolete or engendering disrespect.

There is, however, a consciousness in the Commission that it is the role of the elected government to set major policy directions. This awareness has led to a practice of voluntary restraint in terms of the ambit of proposed amendments which the Commission has brought forward. The Chief Election Officer, Mr. Warren R. Bailie, explains the rationale behind this approach:

> "The Commission is a very intelligent and well-versed study group that the Legislature can go to to get answers to their questions... [but] the people who should be making the decisions and really making the studies with the help of other people, are the legislators".

At the same time, the Commission represents a gathering of individuals who have practical expertise on a relatively esoteric subject with access to extensive research services. The Commission has the time, resources and know-how to investigate the ramifications of significant changes in its legislation. The members also have extensive knowledge of important problem areas in the statute which is available only to those who work with the legislation in question on a regular basis. While it should not be the Commission's role to set general policy, the Commission is the best resource available to recommend new policies, particularly policies which it will be the Commission's task to carry out once they are accepted and passed by the House.

1. Regulations

Presently the Commission is authorized to issue guidelines to the electoral community under Section 4 (1)(j) of the E.F.R.A. Compliance with the guidelines is on a voluntary basis. Thus, while they are very effective in terms of providing assistance and education to those involved, they are not as persuasive as

regulations could be in terms of settling gray areas of interpretation of the statute.

If the Act was amended in order to permit the Commission to pass regulations, normal procedures would provide for review of the legality and the political acceptability of the rules. Once the Commission decided it needed a regulation, a draft would be submitted to the Registrar of Regulations, who would ensure that the rule was in proper legal form and within the ambit of the Commission's authority. The regulation would then be sent to Cabinet for approval. If approved it would then be printed and distributed.

Authority to pass regulations could be used to clear up some of the small adjustments to the legislation which the Commission has suggested in its proposed amendments to the E.F.R.A. To take up the time of the entire House with questions of minor wording in a largely successful statute is not a rational use of resources. For this reason it would be sensible to give the Commission the means to oil and adjust its own machinery, as the present system makes any repair short of a major overhaul very difficult to obtain.

It is possible that there would be public concern over the possible growth of a "secret law" of regulations. People can be suspicious of regulations as a means of slipping changes past the media and public, and altering the thrust of the legislation without public debate.

One way in which the Commission could meet such concerns would be by making its regulations freely available to all those

interested in issues in election financing. This is the Commission's practice now with regard to its guidelines and there would be no reason to change its approach should it be authorized to pass regulations. Debate of any new rule would take place between representatives of the major parties within Commission meetings and representatives would keep their parties informed of any developments of interest.

2. Adjustment of Limitations

Regular adjustment of the set dollar figures in the E.F.R.A. by the Commission was expected to be part of the normal course of affairs by both members of the Camp Commission interviewed for this report. The E.F.R.A. sets many flat limitations on sums which can be received or given out. Contributions to parties, constituency associations and candidates are subject to maximums (section 19). The advertising expenditures of parties, candidates and constituency associations are limited to the product obtained when a set amount is multiplied by the number of voters in the relevant district (section 39). Reimbursements for candidates are determined by a similar method (section 45(1), 45(2). Auditor subsidies are limited to a maximum of $250. for a constituency association report, and $500. for a candidate's report (section 41(7). Cash contributions of over $10. cannot be accepted (section 17(2)). Anonymous contributions of over $5. at a "pass the hat" meeting cannot be accepted (section 25). The figures set out in the Act were calculated in 1974 in the financial circumstances of ten years ago. Mr. Camp raised the topic himself when he said:

> "For example, I suppose that all the limitations that apply, with respect to ceilings and so on, on spending, have got to be revised from time to time...and I suppose that the Commission is more likely to be more sensitive to that, and more realistically attuned to it".

While the initial ceilings were generous, two figures, the $10. limitation on cash contributions, and the $250. maximum sudsidy of auditors' fees for association reports have been suggested to be no longer viable in the 1980s. If the Commission had the authority to pass regulations, these amounts could be reviewed and updated whenever all parties agreed that the limitation involved no longer reflected the degree of restraint originally intended to be imposed in the Act. The difficulty with this approach is that decisions regarding allowable expenditures and receipts are, due to their importance, often indistinguishable from decisions regarding major policy. Several members of the Commission are concerned with this problem, which was well expressed by the Chief Election Officer, Mr. Bailie:

> "In any event, it's my theory that the public should change these things through their representatives at Queen's Park, and we should take the Act and administer it as they decide. Naturally there are these processes where we can give them advice; we can have input. But I don't think that we can set ourselves up as the end all authority."

Yet the financial limitations in the Act will become increasingly out of date and legislative time to remedy the matter is at a premium. A solution which could solve the problem without demanding that the Commission stipulate the appropriate amounts to be included in the Act would be the incorporation

of an adjustment formula into the E.F.R.A. by the Legislature. Such a formula would require the Commission each year to perform a specified mathematical operation on each dollar figure set out in the Act, which would incorporate our annual rate of inflation as determined by the cost of living index. The new limitations so determined would then be published by the Commission. The Act would be kept current and realistic in terms of modern prices, and the Commission would not be called upon to exercise discretion in the matter. Any amendment which incorporated such a formula into the Act should be part of a broad review and updating of all of the dollar amounts now specified in the Act, in order that future escalations would develop from a current base.

3. Municipal Election Practices

The Commission is not required to perform any duties in the municipal field at the present time. There have been developments in this area, however, which indicate that there may be cause for concern here for the Commission in future.

While municipal activity usually does not encroach upon subjects of interest to the Commission, there are two exceptions to this generalization. The first exception is the practice of funneling money solicited at the provincial level of political organization to candidates at the municipal level.

Funneling occurs from time to time when a body registered provincially under E.F.R.A. (usually a riding association) collects money with the intention of donating it to the campaign of a

municipal candidate in a local election. The candidate in question may or may not fly the provincial party colours, and may or may not eventually progress from activity in municipal politics to participation at the provincial level. Be that as it may, the Commission is faced with the fact that a provincially registered body is collecting money and issuing receipts for income tax purposes as part of a municipal campaign. The Commission has ruled that such receipts are invalid. Income tax credits have been provided by the province to encourage widespread participation in the provincial political process. No system of income tax credit has been provided for contributions to the municipal system. The Commission, therefore, takes the position that, since it has no control over the expenses of a riding association as long as its funds are raised for the general purposes of the association, there is nothing that can be done about a transfer payment to another sphere of political activity.

The situation has been further complicated in that a number of municipalities are presently passing by-laws which regulate municipal election contributions and impose financial reporting requirements. These by-laws must conform to section 121 of the Municipal Elections Act[32] which is discussed in detail below. According to section 121(2) of the Municipal Elections Act (M.E.A.) municipal by-laws regulating election contributions must prohibit any "person" from contributing in excess of $500. to a local candidate. Since the Municipal Act defines a "person" as a trade-union, a corporation

and an association, municipal candidates in those municipalities which pass the by-law under section 12(2) are limited in the contribution they may accept from a provincial riding association to $500. from each association.

The Commission, while it is interested in this limitation of contributions by riding associations to municipal candidates in municipalities which pass the required by-law, has no responsibility for administration of the provisions of such by-laws.

Neither the E.F.R.A. nor the M.E.A. provide any guidance for the Commission.

Different aspects of administration and enforcement of municipal by-laws passed under section 121 of the M.E.A. have prompted a proposal for the involvement of the Commission in these matters which is now under consideration in the City of North York. One municipality (the City of Ottawa) has created, in effect, a mini-commission patterned after the provincial organization to deal with administrative and enforcement issues which have developed. The relevant sections of the M.E.A. read as follows:

> 121. (2) The Council of a municipality may pass a by-law regulating election contributions and requiring the reporting of expenses and contributions and, where a by-law is passed under this section, the by-law shall,
>
> (a) prohibit any person from making contributions in excess of $500. in the form of money, goods or services to any candidate in any calendar year;

(b) prohibit any candidate from accepting contributions in the form of money, goods or services in excess of $500. from any person in any calendar year;

(c) require a candidate or his representative to issue a receipt for all money contributions received by him;

(d) require a candidate to keep a record of all expenses incurred by him in respect of his candidacy;

(e) require a candidate to keep a record of all contributions received by him in respect of his candidacy, whether in the form of money, goods or services;

(f) require candidates to file with the clerk of the municipality within ninety days of the date of the election a report which shall contain,

(i) a statement of the total amount of money contributions received by the candidate in respect of his candidacy up to the date of such report,

(ii) a list of contributions in the form of goods or services and the value thereof received by the candidate in respect of his candidacy up to the date of such report,

(iii) the name, address and contribution of each person who, up to the date of such report, made a contribution whether in the form of money, goods or services of more than $100, and

(iv) an itemized list of all expenses incurred by the candidate in respect of his candidacy up to the date of such report;

(g) direct the clerk to submit to the council the information received by him pursuant to a by-law passed under this section; and

(h) empower the clerk to prescribe forms for the purposes of a by-law passed under this section.

(3) Any moneys to be used for an election campaign by a candidate out of his own funds or out of the funds of the spouse of the candidate shall be deemed not to be a contribution for the purposes of a by-law under this section.

(4) A contribution made to a representative of a candidate shall be deemed to be a contribution to the candidate.

(5) Every person who contravenes the provisions of a by-law passed under this section is guilty of a corrupt practice and is liable to a fine of not more than $2,000. 1982,c.37,s.25.

As can be seen above, the authority to pass such by-laws is permissive but, if passed, they must contain the mandatory provisions. (Note: Section 106(1) of M.E.A. provides that any action founded upon a corrupt practice must be commenced by an elector through a generally endorsed writ). Only 26 of the 838 townships and municipalities of Ontario have passed by-laws under Section 121. The number of municipalities interested in such measures is likely to remain low for two reasons:

1) lack of any financial inducement to encourage the regulation of local election financing (e.g. a tax credit scheme).

2) difficulty in enforcing the legislation.

Many municipal candidates are unenthusiastic about a requirement to report their contributions when they are unable to offer a contributor a tax benefit in return.[33] Certainly it would do no harm to provide a means to facilitate fund-raising at the local level, and the tax credit has served this purpose well at the provincial and federal levels. The City of North York,

which passed a by-law under Section 121 of the M.E.A. on July 4, 1984,[34] is currently considering a proposal prepared by Mr. B.G. Nayman, C.A. The proposed calls for a tax credit scheme, similar to those which benefit contributors to provincial and federal campaigns, to be instituted at the municipal level.

The tax credit would be claimed by the contributors from their provincial income tax under separate municipal tax credit sections. The money that would be paid out by the province under this scheme would be deducted from the annual provincial transfer payments which are made to each municipality. Shortfalls in their transfer payments would then be recouped by the municipalities through property taxes.

As it is presently proposed, the Commission would be required to oversee the administration of the program. The North York proposal is based on the premise that the Commission would register municipalities which chose to participate. The Commission would also register candidates, receive audited returns from the candidates and provide official tax receipts. Copies of the candidates' returns would be kept by the Commission, and a copy would be sent to the municipal clerk of the relevant area to be made available to the local public.

The responsibilities proposed for the Commission in the North York study are, in the main, a continuation of duties which are presently performed on the provincial level, and thus they could be fairly easily integrated into the regular operations of the office. However, the Commission has no desire to become

involved in the administration of numerous local elections all operating under individual legal provisions. If the Commission were asked to assist in such a matter it would seem reasonable to require that all registered municipalities pass identical election by-laws. This is not the situation at present, because under section 121 a municipality may include any additional provisions in its by-laws it wishes as long as all the mandatory provisions are present, and as long as the additional provisions do not conflict with the mandatory provisions.

The initial responsibility for enforcement of by-laws passed under section 121 falls upon the municipal clerk, whose duty it is to report on the administration and contraventions of the by-law to council. Council must then decide whether or not the contraventions are to be pursued.

A survey carried out by the Commission in 1983 indicated widespread dissatisfaction with this procedure among city clerks with responsibilities under such by-laws. The obligation to bring contraventions of the by-law to the attention of council places the clerk in the unenviable position of 'going after his boss'. It is possible, for example, that a clerk could be forced to challenge his mayor's right to sit, should the mayor be in apparent contravention of the by-law. It was also seen as undesirable that councillors faced with an apparent contravention should be asked to judge whether or not a fellow candidate should be subject to prosecution.

An innovative approach to this problem has been developed by the City of Ottawa. On September 1, 1982, Ottawa established a By-law Review Committee, patterned closely after the provincial Commission on Election Contributions and Expenses. As political parties are not dominant at the local level, the representatives on the committee are chosen by the:

1) Ottawa Board of Trade
2) Ottawa District Labour Council
3) County of Carleton Law Association
4) Canadian Institute of Accountants
5) City Council (chooses the chairman)

The Committee assists the Clerk in preparation of guidelines, examines the reports filed by candidates and considers any complaints received to determine whether or not there has been an apparent breach of the by-law. Apparent contraventions are reported publicly to Council. Although this arrangement protects the City Clerk from the imposition of unfair responsibility, it does little to guarantee the ultimate prosecution of those who contravene the by-law. Ottawa City Council has taken the position that once a contravention is reported to open Council it is up to a public-spirited elector to allege a corrupt practice in accordance with section 106 of the M.E.A.

In Quebec enforcement of municipal election legislation is the responsibility of the Director General of Elections. Chapter VII of the Act to Govern Elections in Certain Municipalities contains extensive provisions regarding the authorization of municipal parties and candidates, limitations of contributions and expenditures and the submission of returns by candidates and parties to the

municipal treasurer. Municipalities with a population of over 20,000 are subject to the regulations. Municipalities with a population between 10,000 and 20,000 may choose to be supervised under these provisions.

Two factors encourage the effective enforcement of the Quebec statute:

1. For the purposes of the Act, the city treasurer (a position similar to that of city clerk) is subject to the authority of the Director General. He is obligated to the Director General to obtain compliance with the terms of the Act and to report contraventions. Prosecutions are instituted solely at the discretion of the Director General. The treasurer, in this system, is responsible, not to the council but to the Director General. If his duties require him to report a council member or rebuke a councillor, he is viewed in that instance as an agent of the Director General rather than as an abrasive city employee.

2. In Quebec, the legislation incorporates a scheme for the reimbursement of 50 per cent of the election expenses of independent candidates and parties in municipal elections. This is paid out of the munic-municipality's general fund by the treasurer. If the election expense returns of the parties and candidates are not submitted to the treasurer, the treasurer is forbidden by statute to pay the reimbursement. This obviously encourages the filing of returns.

Some more effective method of enforcing by-laws under section 121 of the M.E.A. will probably be developed over time. In the meantime the Commission is following developments in the municipal field in the belief that research on this topic will likely be of use either to the municipal or provincial levels of government in the future.

4. Ethical Conduct

Problems regarding the ethical conduct of elected representatives in Ontario are rare, and perhaps because of this, the structure in place to deal with the issue is very simple. Guidelines on Conflict of Interest were introduced by the Premier for ministers and parliamentary assistants in 1972. Under these guidelines, ministers, parliamentary assistants, their spouses and minor children are prohibited from purchasing land or interests in land in Ontario, except for personal use. Members and parliamentary assistants are also forbidden to hold an interest in a private company which may become contractually involved with the Government of Ontario. If a matter involving a personal interest comes before a ministry, the minister involved must arrange that a colleague be appointed in his stead regarding the matter. Disclosure is made to the Clerk of the Legislative Assembly by ministers and parliamentary assistants regarding properties owned either directly or indirectly by the minister and parliamentary assistant, or by his spouse and minor children. The Clerk of the Legislature described the disclosure process as follows:

> "they send a copy [of ministers and parliamentary assistants' Statements of Disclosure] to the press gallery at the same time as they send it to me. So I just...give it to....My Clerk of Committees and Co-ordinator of Private Bills... he keeps one file there with all of the ministers' statements in it. When a minister changes his holdings he sends me a new statement and we return the old one to him and put the new one in its place. But, as I say, I don't think we ever get asked for it."

Filing is done on the initiative of the minister; when he believes he should file a change, he does so. There is no enforcement mechanism to demand a filing after any specific event, or to require regular filings.

While matters of conflict of interest regulation have been handled comfortably in this informal manner in the past, it is possible that an organization equipped to provide guidance on this subject could be of use to an elected member who stumbles accidentally into an ethical gray area. At the federal level, the recently released Report of the Task Force on Conflict of Interest has proposed the formation of an Office of Public Sector Ethics headed by an Ethics Counsellor appointed by Order-in-Council. The Ethics Counsellor would provide advice with respect to ethical rules and procedure for public officials, administer ethical rules, i.e. receive statements of disclosure and make them available to the public, investigate any allegations of unethical behaviour and educate those subject to regulation of their conduct.[37]

The idea of an Ethics Commission with broad duties in political and election financing, conflict of interest matters and ethics advising, has not been seriously considered in Canada, though such commissions are generally popular among the American State Some expansion of the duties of the Commission might be considered if the need becomes apparent. The Commission is already set up to receive and verify financial statements which are then made available for public reference. Statements of financial

disclosure could be included in the regular administrative work of the office without difficulty. The Commission is also experienced in the matter of public education, and is perforce in contact with all elected members through their campaign period returns, and through the annual reports of the Commission to the Speaker. The drafting of guidelines regarding ethical practices and the forwarding of information to elected members is work well within the competence of the Commission.

Provision of advisory opinions based on particular fact situations, and the investigation of allegations of unethical behaviour may not be a suitable area for the Commission to be involved in, however, a group of individuals representing all major parties with current knowledge of accepted political practices may appear well-equipped to arrive at a non-partisan and realistic resolution of ethical uncertainties. Be that as it may, the Commission was not set up to function in an adjudicative fashion. If its members were placed in the position of having to judge the conduct of a member of a particular party, it would be difficult, given the essentially partisan nature of the Commission, for members of the Commission to make a value judgment on the facts before it without an appearance of bias. It might also be difficult to persuade any elected member to seek advice regarding the possible propriety of his conduct from a group consisting partially of his political opponents.

There is no obvious public need for development of conflict of interest legislation in Ontario at this time. The Commission, however, is a member of the Council on Government Ethics Laws, and sends representation to the annual conference. That organization is composed of Canadian and American governmental bodies which deal in one or more areas of public ethics, and there is an excellent opportunity of observing the many forms taken in North American governments to deal with local situations. To this extent the Commission has a background of knowledge from which to approach any such subject.

Conclusion

This study has attempted to present the role of the Commission on Election Contributions and Expenses in the carrying out of the electoral reforms enacted by the E.F.R.A. and to discuss responsibilities with which the Commission may be entrusted in the future. The Election Finance Reform Act, through its contribution limitations and disclosure provisions, was intended to protect the integrity of the political process. The success of this legislation depends upon how vigorously the law is observed.

The experience of the C.E.C.E. indicates that this goal has been achieved and that the Commission has satisfactorily carried out the mandate entrusted to it by the Ontario Legislature.

INTERVIEWS ASSISTING IN RESEARCH

1.	Aiken, Gordon H., Q.C. Toronto, August/84	Chairman: Commission on Election Contributions and Expenses (C.E.C.E.)
2.	Bailie, Warren R. Toronto, July/84	Chief Election Officer of Ontario, Member: C.E.C.E.
3.	Bryden, Kenneth Toronto, July/84	Past Member: C.E.C.E.
4.	Camp, Dalton K. New Brunswick (telephone) July 20/84	Chairman: Ontario Commission on the Legislature
5.	Cooke, F. Stewart Toronto, July 10/84	Past Member: C.E.C.E.
6.	Cote, Pierre F., Q.C. Quebec City, July 3/84	Director General of Elections, Quebec
7.	Dickens, Penny Toronto, July 12/84	Member: C.E.C.E.
8.	Dobson, Robert B. Toronto, August 2/84	Registrar: C.E.C.E.
9.	Fleming, Robert J. Toronto, July 19/84	Executive Secretary Ontario Commission on the Legislature
10.	Guthrie, H. Donald, Q.C. Toronto, July 11/84	Member: C.E.C.E.
11.	Joynt, Donald A.(C.A.) Toronto, July 27/84	Executive Director C.E.C.E.
12.	Kowal, Edward J., Q.C. Toronto, July 2/84	Past Member: C.E.C.E.
13.	Legge, Laura, Q.C. Toronto, July 13/84	Member: C.E.C.E. (Bencher of the L.S. of U.C.)
14.	Lewis, Roderick, Q.C. Toronto, July 4/84	Clerk of the Legislative Assembly, Past Member: C.E.C.E. Past Chief Election Officer (Ontario)

15.	Scandlan, William F. Toronto, July 17/84	Member: C.E.C.E.
16.	Sobier, Ronald E., Q.C. Toronto, July 10/84	Member: C.E.C.E.
17.	Sullivan, Barbara Toronto, October 28/84	Member: C.E.C.E.
18.	Wright, Robert J., Q.C. Toronto, July 20/84	Member: C.E.C.E.
19.	Young, Harold W. Toronto, July 16/84	Past Member: C.E.C.E.

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32. Municipal Elections Act, R.S.O., 1980 C-308 as amended 1981, c.47 s.24, 1982 c.2, c.37.

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